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No. 82-330

In The
Supreme Court of the United States
October Term, 1982

Charles H. Sylvain,
Petitioner,

v.

Priscilla S. Henderson, Executrix,
Estate of Eudore J. Sylvain,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of New Hampshire

BRIEF OF PRISCILLA S. HENDERSON, EXECUTRIX, ESTATE OF EUDORE J. SYLVAIN IN OPPOSITION

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TABLE OF CONTENTS

	Page
Statement	1
Argument	3

TABLE OF AUTHORITIES

International Shoe Co. v. *Washington*, 326 U.S. 310 (1945)	4
Milliken v. *Myer*, 311 U.S. 457 (1940)	4
Shaffer v. *Heitner*, 433 U.S. 186 (1977)	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-280

CHARLES H. SYLVAIN,
Petitioner,

v.

PRISCILLA S. HENDERSON, EXECUTRIX,
ESTATE OF EUDORE J. SYLVAIN,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New Hampshire

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BRIEF OF PRISCILLA S. HENDERSON, EXECUTRIX, ESTATE OF EUDORE J. SYLVAIN IN OPPOSITION

STATEMENT

The instant Petition seeks review of an order of the New Hampshire Supreme Court summarily affirming a decision of the Strafford County Court of Probate. (Pet. App. A1)[1] The latter decision, dated February 4, 1982, ap-

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[1] Petitioner has filed a separately bound "Appendix A" which reproduces the rulings below. References to that Appendix are denoted "Pet. App. A—." The rulings below as well as the Petition for Certiorari omit some details of this lengthy litigation which are

proved the Fourth and Final Account submitted by Priscilla S. Henderson, Executrix of the Estate of Eudore J. Sylvain, thereby permitting the Estate to be closed and its assets distributed. (Pet. App. A12-A21)[2] The deceased Eudore J. Sylvain died in 1971 leaving an estate valued at approximately $52,000. The Petitioner, Charles Sylvain, is the deceased's son. Real property valued at about $20,000 was devised to Petitioner's stepmother, with the balance of the estate devised in equal shares to Petitioner and his sister, Priscilla Henderson. The Petitioner and Mrs. Henderson were named as co-executors, but Petitioner declined to serve. In a variety of proceedings now finally concluded, Petitioner unsuccessfully contested his father's will and thereafter interposed a variety of objections to his sister's efforts to conclude the administration of the Estate. (Resp. App. 1a-5a) The only issues before this Court arise out of Petitioner's unsuccessful efforts to oppose approval of his sister's Fourth and Final Account and the resulting final settlement of his father's estate.[3]

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helpful to an understanding of the current posture of the case. We have, accordingly, reproduced the Petition filed by the Respondent on September 1, 1981, seeking certain additional relief in the light of the Petitioner's persistent opposition to final settlement of the Estate. While Petitioner opposed the Petition below, he does not, so far as we are aware, dispute the accuracy of the chronology of this litigation which it sets forth. References to our Appendix are denoted "Resp. App. —a."

[2] Another Probate judge had previously allowed the Account in an order entered December 6, 1977 following a contested hearing. Petitioner appealed from that order to the New Hampshire Supreme Court. Resp. App. 4a. But for reasons not relevant to the issues now before the Court, the appeal was not pursued and the 1977 order was vacated in an order dated December 15, 1981. (Pet. App. A2-A12) The Final Account and the Petition were then considered together in a hearing held on January 26, 1982 and resolved in the order of February 4, 1982.

[3] No final order has been entered with respect to the relief requested in Respondent's September 1, 1981 Petition. *See* Pet. App. A17.

ARGUMENT

Petitioner apparently contends that the decisions below are somehow violative of certain provisions of New Hampshire Statutes having to do with the administration of decedents' estates. He asserts as well that his constitutional right to equal protection of the law has been violated in the process. These contentions plainly do not afford the Court a basis for jurisdiction. This Court obviously does not sit to correct real or alleged errors committed by the Nation's probate courts. Moreover, Petitioner simply does not specify how New Hampshire laws have been violated by the lower courts or how, in any event, his right to equal protection has been infringed.

Petitioner also asserts that he was denied due process in the proceedings below. His claim boils down to the assertion that he was denied "notice and [an] opportunity to be heard . . ." (Pet. at p. 45) But the decisions of the Court of Probate make clear that Petitioner, in fact, had more than adequate notice and a full opportunity to be heard. It is true that Petitioner did not at first receive a copy of his sister's Petition. But after ruling that this error, later corrected, did not prejudice the Petitioner, the Probate judge nonetheless rescheduled the hearing on the Final Account, thereby affording the Petitioner a substantial additional period of time to prepare his contentions. (Pet. App. A9) At the rescheduled hearing Petitioner contested two sales of stock which had been carried out by his sister for the Estate, presumably asserting that they were in breach of her fiduciary duty. The Probate judge, after hearing the Petitioner's arguments, ruled that the transactions were proper. (Pet. App. A13-A14)

Under all of these circumstances it is difficult to apprehend the basis for Petitioner's due process contentions. All that is required of state court proceedings is that they be conducted in a fashion "reasonably calculated to give [affected parties] actual notice . . . and an op-

portunity to be heard" so as to comport with "traditional notions of fair play and substantial justice . . ." *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940). *See* also *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). *Cf. Shaffer* v. *Heitner*, 433 U.S. 186 (1977). That standard has plainly been met in this case, and there is nothing on the face of the Petition to indicate otherwise.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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